IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8059 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAY GUJARAT PANCHAYAT VARG VIKAS MANCH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8059 of 2000

MR BP MUNSHI for Petitioner Nos. 1-2

MS HARSHA DEWANI AGP for Respondent No. 1

MR PARESH UPADHYAY for Respondent No. 2

LAW OFFICER BRANCH for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 31/08/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Through this petition under Article 226 of the Constitution of India, the petitioners have challenged the selection held for the post of Civil Judge (J.D.) and J.M.F.C, which was held by the High Court of Gujarat for 100 posts of Civil Judge (J.D.) and J.M.F.C. under the Gujarat State Judicial Service and the prayer has also been made to fill up existing 99 posts kept reserved for S.T./S.C. candidates from the candidates of reserved categories only.

2. The petitioners "Jay Gujarat Pachhat Varg Vikas Manch" as petitioner No.1 and Shri G. K. Prajapati its Chairman as petitioner No.2 filed this Special Civil Application on 25.5.2000 before this Court. On 24/7/2000, when the matter came up before the Court for the first time, the time was sought to produce the merit list of written examination and the list of the members of the petitioners Association who had applied and appeared but have not been selected in the selection. On 31/7/2000, the time was sought to implead the selected candidates as parties to this petition and the copies of the petition had been supplied to the learned Assistant Government Pleader and Mr.Paresh Upadhyaya, learned counsel for the High Court of Gujarat. Thereafter, an amendment application was filed by petitioners seeking to implead the selected candidates as respondent Nos.3 to 112 which was allowed on 2.8.2000. The affidavit-in-reply dated 2nd August, 2000 had been filed on behalf of the respondent No.2.

3. The petitioners came with the case that the High Court of Gujarat issued an advertisement on 5/2/1998 inviting applications for the post of Judicial Officers in different in para-3 of the petition categories with reservation for S.C./S.T candidates. The petitioners have stated that they are mainly concerned with the fourth category which is of 100 posts of Civil Judge (J.D) and J.M.F.C in the Gujarat State Judicial Service, Class-II, (Junior Branch). In the examination which was held for these posts by the High Court, 489 candidates were declared successful on 4.10.99. The oral interview was conducted on or about 22.11.1999 to 27.12.1999 and ultimately 110 candidates were selected on 31.1.2000. The petitioners have agitated their concern about the S.C./S.T. candidates who may have applied for the above posts in question and who may have not been selected. On 24.7.2000, the time was granted to produce the list of the members of the petitioner Associations who had appeared in the selection and who had not been selected.

However, in the affidavit which was filed by the Chairman of the petitioner Manch on 29.7.2000, it has been stated in para-3 thereof that he did not know the number of candidates of S.C./S.T. categories who had applied for the concerned post. He also did not know how many S.C./S.T. candidates had appeared in the written test as well as oral test and he did not know how many of them have been selected. It has further been stated in the affidavit that the Deputy Chairman of the petitioner Manch Shri Narayanbhai S. Chaudhary had requested for supply of necessary information by letter dated 5.2.2000 addressed to the Registrar of the High Court of Gujarat and the Registrar of the High Court of Gujarat had refused to give information as per the letter dated 15.2.2000. It has also been stated in the affidavit that the list of the successful candidates in the written test, which was published as per ANNEXUER-B was the list in alphabetical order. It is found that the petition is totally lacking in necessary particulars and even in the amendment which was granted on 2.8.2000, no request except to implead the names of the 100 candidates as respondent Nos.3 to 112 was made.

4. However, the affidavit-in-reply dated 2.8.2000 as has been filed by the respondent No.2, shows that out of total 100 posts advertised, 10 posts were reserved for S.C. candidates and 89 posts were reserved for S.T. It was also mentioned in the advertisement that if no suitable candidates from S.C. or S.T. are available, the posts reserved for them will be filled up from General Category. It is also mentioned in the advertisement that at the relevant time approximately 55 vacancies were there and remaining candidates are to be placed on the waiting list for future vacancies. In pursuant to this advertisement, total 1727 applications were received, out of which 249 applications were received from S.C. candidates and 27 applications were received from S.T. candidates. Those applications were scrutinized in the light of the eligibility criteria prescribed in the advertisement and those who were found fulfilling criteria as per the advertisement were called for the written test. That in all 1514 candidates were called for written test which included 212 candidates belonging to S.C. and 21 candidates belonging to S.T. Out of total 1514 call letters issued, 267 candidates remained absent and 1247 offered themselves for the written test. Out of 1247 candidates who appeared in the written test, 185 candidates belonging to S.C. and 16 candidate belonging to S.T were there. Out of 267 candidates who remained absent in the written test, 27 candidates belonged to S.C. and 5 candidates belonged to

S.T. though they were called for written test. The written test was for 150 marks and it was decided that only such candidates be called for interview who secure at least 40% marks i.e. 60 marks in the written test. Based on this criteria, total 489 candidates were called for interview which included 46 candidates belonging to S.C. and 2 candidates belonging to S.T. The interview was conducted by the selection committee constituted for the purpose by the High Court of Gujarat (on its administrative side) and on the basis of over all performance of candidates in the written test plus interview, the combined merit list of total 110 candidates was prepared. As against the total 10 posts reserved for S.C. candidates, 8 candidates have been selected and kept on the select list. No candidate of S.T. stood in the merit and, therefore, there is no S.T. candidate in the select list and by the time the affidavit-in-reply was filed, 70 candidates from the select list had been appointed.

5. It, therefore, appears that so far as the selections are concerned, right from beginning due care was been taken to notify appropriate number of vacancies for the reserved category of S.C./S.T. candidates on the basis of scrutinizing the applications for the written test were appropriately called for written test and even after the written test, the candidates who have qualified the criteria for being called for interview were called and they did include 46 candidates belonging to S.T. and 2 candidates belonging to S.C. and even in the final select list as against 10 reserved vacancies for S.C., 8 candidates of S.C. have been selected. If no one was found to be suitable from the amongst the S.T. candidates there was no question of inclusion of any S.T. candidate in the select list. From the reply, it appears that, the selections have been absolutely fair and the grievance of the petitioner Associations is wholly misconceived. Despite keeping reservation if the sufficient number of candidates of reserved categories are not available only such number of candidates who are found to suitable in the reserved category could be included in the select list and it cannot be said that if 10 posts are reserved for S.C. candidates, all the 10 posts of S.C. have to be filled by S.C. candidates, whether they are selected or not and if the suitable candidates are not available against the reserved vacancies such vacancies cannot be allowed to remain unfilled indefinitely and, therefore, the grievance as has been raised cannot be said to be a legitimate grievance.

6. It is found from the averments made in para-(1) of the petition that the petitioner No.1 - Jay Gujarat Panchhat Varg Vikas Manch, is a registered public Trust and petitioner No.2 is its Chairman. This Manch claim to be comprising of the membership of persons belonging to S.C/S.T and other Backward Classes and the object of this Manch is to carry out the development activities amongst the Socially and Educationally Backward Classes of Gujarat (Baxi, Mandal Panch, S.C./S.T. and minority society) and to remove the differences between these, to carry out the activities on equal basis and to inculcate the feeling of cooperation and to carry out the multifarious activities for the Social and Educational Progress for overall development of Backward Classes. It appears from the objects which have been narrated by the petitioners, that the petitioner Manch may be interested ex-facie in the cause of S.C./S.T. and Socially and Educationally Backward Classes but that does not mean that, it is entitled to challenge the selection which are held in accordance with rules for the purpose of appointing Judicial Officers in Gujarat State Judicial Service. It appears that the petition has been filed by the petitioner Manch as a busy body without having any particulars of it, when the Chairman of the petitioner Manch says that he has no record and he does not know as to how many candidates of S.C./S.T. had applied in the selection and how many of such candidates have been selected, as is evident from the affidavit-in-reply dated 29.7.2000 it becomes transparently clear that the petition has been filed by the petitioner Manch as a busy body, on absolutely bald incomplete and vague allegations without having any relevant data. The persons who have obtained few more marks in the written test have got lesser marks in the interview does not impinge upon the validity of the selections. Whether any particulars were furnished or not by the Registrar, High Court of Gujarat to the petitioner Associations, the facts have come on record through the reply which has been filed on behalf of the respondent No.2. The advertisement was issued for 100 posts out of which 99 posts were reserved for the S.C./S.T. candidates with the clear mention that in case suitable candidates are not available for the reserved categories, the candidates from the general category will be appointed. If the sufficient number of candidates for the reserved categories have not been found suitable and hence not selected, no direction can be issued that all 99 posts which were kept for S.C./S.T. must be filled from the reserved categories only. In such case, the vacancies cannot be left unfilled indefinitely.

7. We do not find any substance in this Special

Civil Application. It appears that the Special Civil Application Application has been filed on absolutely vague and bald allegations, on incomplete information and just to thwart the selection and appointments as had been made and it also appears that the petitioner claiming to be a Manch looking after the welfare of the members of S.C./S.T. candidates, has not made any effort and preparation even to project their case in a correct perspective. It appears to be a case of abuse of Public Interest Litigation or Social action litigation.

8. We do not find any substances in this petition and the same is hereby dismissed with no order as to costs.

(M. R. Calla,J.)

(Ravi R. Tripathi,J.)

(vrp)